*IN THE UNITED STATES PATENT AND TRADEMARK OFFICE*

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| Applicant: | BENNEKER ET AL. |
| Title: | CRYSTALLINE PAROXETINE METHANE SULFONATE |
| Patent No.: | 7,598,271 |
| Issue Date: | 10/06/2009 |
| Examiner: | Celia Chang |
| Art Unit: | 1625 |
| Confirmation Number: | 9739 |

**REQUEST FOR RECONSIDERATION OF DECISION ON APPLICATION FOR PTA UNDER 37 C.F.R. §1.705 & RESPONSE TO DECISION ON PETITION**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Patentee hereby requests reconsideration of the Decision on Application for Patent Term Adjustment issued January 24, 2011 in the captioned patent, U.S. 7,598,271. This response is timely filed within the one month period set forth on page 3 of the Decision. The Decision awarded 2073 days PTA, but Patentee believes that the patent should be awarded **2729 or 2730 days PTA**.

## I. ERROR IN PTA CALCULATION: 290 Days

Patentee believes that the total amount of PTA indicated in the Decision (2073 days) does not agree with the total of the PTA awards acknowledged in the Decision. In particular, the 2073 days does not appear to take into account the days due under 35 USC § 154(b)(1)(B). Patentee

requests reconsideration of the PTA calculation and award of an additional 290 days PTA under the PTO's own interpretations and applications of the PTA statutes and rules.

The Decision indicates that the PTO is awarding (i) 603 days for the interference under 35 USC § 154(b)(1)(C) (page 2, "first period" in dispute); (ii) 1925 days for "three year delay" under 35 USC § 154(b)(1)(B) (page 2, "second period" in dispute), and (iii) 1455 days for "prosecution delay," apparently under 35 USC § 154(b)(1)(A)(iii) (pages 2-3, "fifth period" in dispute). The PTO also has awarded (iv) 15 days PTA for delay in issuing the patent under 35 USC § 154(b)(1)(A)(iv), which is not in dispute and so is not mentioned in the Decision, but is taken into account in the PTO's PTA calculation, as shown on PAIR.

The award of 2073 days PTA set forth in the Decision can be reached by adding:

(i) 603 days + (iii) 1455 days + (iv) 15 days = 2073 days

Indeed, these are the only delays indicated on the PTO's PTA calculation shown on the PTA tab for this patent on PAIR, which also shows "0" days awarded for "B Delays" in the summary.

Thus, the PTO's PTA calculation appears to fail to award any PTA under 35 USC § 154(b)(1)(B), even though the Decision acknowledges that 1925 days of PTA were accrued 35 USC § 154(b)(1)(B).

As the PTA awarded under 35 USC § 154(b)(1)(B) must not include the period consumed by the interference, and days with different types of delay will not be double counted, the total PTA shortfall in the PTO's calculations (under the PTO's own interpretations and applications of the PTA statutes and rules) due to the failure to award PTA under 35 USC § 154(b)(1)(B) is 290 days:

| | |
|---|---|
| 1925 days | (from 3 years from filing date to day before filing of Request for Continued Examination, as acknowledged in Decision; *see* 37 CFR § 1.703(b)(1)) |
| – 180 days | (portion of three year delay overlapping with PTA award under 35 USC § 154(b)(1)(C) for interference; *see* 37 CFR § 1.703(b)(2)(i)) |
| - 1455 days | (portion of three year delay overlapping with PTA award apparently under 35 USC § 154(b)(1)(A)(iii); *see* 37 CFR § 1.703(f)) |
| 290 days | additional PTA owed under PTO's own interpretations and applications of the PTA statutes and rules |

Patentee therefore requests reconsideration of the PTA calculation and award of an additional 290 days PTA under the PTO's own interpretations and applications of the PTA statutes and rules.

**II.** ERRORS IN APPLICATION OF PTA STATUTE AND RULES

Patentee also requests reconsideration of the Decision with regard to the third, fourth and fifth delay periods (as enumerated in the Decision) that are in dispute.

A. Third Time Period In Dispute: 663 days (60 additional days)

The Decision awards 603 days PTA under 35 USC § 154(b)(1)(C)(i), for the time period relating to the interference. This is the time period from the date the interference was declared (October 1, 2002) until the date the interference was decided (May 25, 2004).

After the Request for Reconsideration of PTA was filed October 22, 2009 and the Supplemental Request was filed June 2, 2010, Patentee's representative learned that the PTO has awarded PTA under 35 USC § 154(b)(1)(C)(i) for a time period that runs from the date the

interference was declared until ***60 days after*** the interference was decided. *See* Decision on Request for Reconsideration of Patent Term Adjustment mailed June 3, 2010 (redacted copy attached).

This interpretation is consistent with 37 CFR §1.703(c)(1), which provides that the period of adjustment under 37 CFR §1.702(c) ("Delays caused by interference proceedings") includes "[t]he number of days . . . in the period beginning on the date an interference was declared . . . and ending on the date that the interference was ***terminated***" (emphasis added), because 37 CFR § 41.205(a) provides:

> After a final decision is entered by the Board, an interference is considered ***terminated*** when no appeal (35 USC § 141) or other review (35 USC § 146) ***has been or can be*** taken or had.

and 35 USC § 142 sets a minimum 60 day period for an appeal to the Federal Circuit (e.g., 35 USC § 141) and 35 USC § 146 sets a minimum 60 day period for a civil action.

Applying this interpretation to this case, the PTA award for the delays associated with the interference under 35 USC § 154(b)(1)(C)(i), 37 CFR §1.702(c), and 37 CFR §1.703(c)(1) should run through ***60 days after*** the interference was decided (e.g., through July 23, 2004), for a total PTA award for the delays associated with the interference of 663 days. Patentee therefore requests an award of an additional 60 days PTA for the delays caused by the interference.

B. Fourth Time Period In Dispute: 33 days (1 or 33 additional days)

The Request for Reconsideration of PTA filed October 22, 2009 raised the issue of the PTO's failure to award PTA for PTO delay under 37 CFR § 1.702(a) and 37 CFR §1.703(a)(6) due to the PTO's failure to issue the patent within four months of the issue fee payment made October 1, 2008, until Applicants filed a Petition to Withdraw Application from Issue on March 6, 2009 (33 days).

The Decision alleges that "no adjustment pursuant to this Rule is warranted," but cites no authority for that position. The Decision states that "due to Applicant's request to withdraw the application from issuance, the Office was not required to issue the patent at that time." However, this argument ignores the fact that the Petition to Withdraw was not filed until ***after*** the PTO already had failed to issue the patent within the time period set forth in 35 USC § 154(b)(1)(A)(iv) and 37 CFR §1.702(a)(4). Up until the time the Petition was filed with a Request for Continued Examination, the issue fee had been paid and "all outstanding requirements were satisfied."

As there is no statutory or regulatory authority to deny Patentee patent term adjustment based on this PTO delay, the PTA for this patent should be recalculated to include this 33 days.

This period of delay overlaps for all but one day with the delay accrued and due under 35 USC § 154(b)(1)(B). Thus, if the delay due under 35 USC § 154(b)(1)(B) is properly accounted for in the PTA award as set forth in Section I above, then the total number of days of PTA in dispute on this ground would be 1 day. Patentee therefore requests an award of an additional 1 day of PTA for this delay.

C-1. Fifth Time Period In Dispute: 2546 days (365 or 305 additional days)

The Request for Reconsideration of PTA filed October 22, 2009 raised the issue of the PTO's failure to award PTA for PTO delay under 37 CFR § 1.702(a) and 37 CFR §1.703(a)(2) due to the PTO's failure to issue an Office Action under 35 U.S.C. § 132 or a Notice of Allowance under 35 § U.S.C. 151 within four months of the Reply filed on May 31, 2001 (a Response to Restriction Requirement). *See also* 35 USC § 154(b)(1)(A)(ii). That delay started September 30, 2001 (four months after the Reply was filed) and extended through September 19, 2008, when the PTO issued a Notice of Allowance, which was the first notice issued by the PTO that "stops the clock" under 37 CFR § 1.703(a)(2) after Applicants' May 31, 2001 Reply, amounting to a delay of 2546 days.

This period of delay overlaps entirely with the 603 days of delay awarded under 35 USC § 154(b)(1)(C), the 1455 days of delay apparently awarded under 35 USC § 154(b)(1)(A)(iii), and 123 days of the 290 additional, non-overlapping days of delay accrued and owed under 35 USC § 154(b)(1)(B). In view of these PTA awards, the total number of days of PTA in dispute on this ground is 365 days.

This period of delay also overlaps entirely with the additional 60 days of delay that should be awarded under 35 USC § 154(b)(1)(C), as set forth in Section II-A above. Thus, if the total PTA awarded under 35 USC § 154(b)(1)(C) is 663 days, then the total number of days of PTA in dispute on this ground is 305 days.

In the August 26, 2009 communication that "dismissed" the Request for Reconsideration of PTA filed October 22, 2009, the Office alleged that the Notice of Suspension mailed August 2, 2001 was a "notification under 35 U.S.C. § 132" that "stops the clock for determining examination delay" under § 1.703(a)(2), which allegedly did not start running again until the favorable decision by the Board of Patent Appeals and Interferences issued on May 25, 2004. As pointed out in the Renewed Request for Reconsideration of PTA filed October 22, 2009 (within two months of the first communication and within two months of the patent grant date), the PTO's position was contrary to the plain language of the applicable statutes and the PTO's own guidance documents.

For example, the PTO's position that the Notice of Suspension constitutes a notification under 35 U.C.S. § 132 that "stops the clock" under § 1.703(a)(2) is contrary to the plain language of 37 C.F.R. § 1.703(a)(2) and 35 U.S.C. §132.

According to 37 C.F.R. § 1.703(a)(2):

> "The period of adjustment under §1.702(a) is the sum of the following periods . . . (2) The number of days, if any in the period beginning on the day after the date that is four months after the date a reply under §1.111 was filed and ending on the date of

> mailing of either ***an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151***, whichever occurs first....

An action under § 132 must include a rejection, objection or requirement to which an applicant must reply in order to continue prosecution:

> Whenever, on examination, any claim for a patent is **rejected, or any objection or requirement made**, the Director shall notify the applicant thereof, stating the reasons for such **rejection, or objection or requirement**, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application; and if after receiving such notice, the applicant persists in his claim for a patent, with or without amendment, **the application shall be reexamined**....
>
> 35 U.S.C. § 132(a) (emphasis added).

The Notice of Suspension did not include any "rejection or objection or requirement." Rather, it stated that the pending claims "are allowable," but that "due to a potential interference, *ex parte* prosecution is suspended." Moreover, the Notice of Suspension did not require any reply from Applicants, or set any time period for reply. Thus, it does not have any of the hallmarks of a notice under 35 U.S.C. § 132.

That the Notice of Suspension should not "stop the clock" of PTO delay under § 1.703(a)(2) is further underscored by the fact that Applicants could have done nothing to advance prosecution at that point. Indeed, prosecution had been suspended. A suspension of prosecution cannot constitute an action under § 132 merely because the PTO initiated the suspension. To the contrary, a suspension of action is a delay caused by the PTO, and the Notice of Suspension serves only as an express admission of the PTO's delay. No provision of the Patent Term Adjustment statute or rules allows the PTO to escape accountability for such delay.

Treating the Notice of Suspension as an action that "stops the clock" under § 1.703(a)(2) also is inconsistent with MPEP § 709(II), which states that "[s]uspension of action at the initiative of the Office should be avoided, if possible, because such suspension will cause delays in examination . . . and may lead to . . . patent term extension, or adjustment, due to the

suspension." Thus, the MPEP expressly contemplates that PTO-initiated suspensions, such as that at issue here, constitute PTO delay that should be counted towards PTA.

Perhaps recognizing the lack of merit in its first communication, the Decision does not assert that the Notice of Suspension mailed August 2, 2001 was a notification under 35 USC § 132. Instead, the Decision simply asserts that "the period of delay should have commenced with the four month anniversary of the mailing of the decision on the interference . . . and not with the four-month anniversary of the filing of the response to the restriction requirement." While this award appears to comport with 35 USC § 154(b)(1)(A)(iii), which applies when the PTO fails to "act on an application within 4 months after the date of a decision by the Board . . . under section 134 or 135," it does not justify the PTO's failure to award PTA for the PTO's delay that began four months after the Reply (Response to Restriction Requirement) filed May 31, 2001, as required by 35 USC § 154(b)(1)(A)(ii) and 37 CFR § 1.702(a)(2) and 37 CFR §1.703(a)(2).

As there is no statutory or regulatory authority to deny Patentee patent term adjustment based on this PTO delay, the PTA award for this patent should be recalculated to include this 2546 days.

As noted above, this period of delay overlaps entirely with the 603 days of delay awarded under 35 USC § 154(b)(1)(C), the 1455 days of delay apparently awarded under 35 USC § 154(b)(1)(A) (iii), and 123 days of the 290 additional, non-overlapping days of delay accrued and owed under 35 USC § 154(b)(1)(B). Thus, in view of the PTA awards, the total number of days of PTA in dispute on this ground is 365 days.

Additionally, this period of delay also overlaps entirely with the additional 60 days of delay that should be awarded under 35 USC § 154(b)(1)(C), as set forth in Section II-A above. Thus, if the total PTA awarded under 35 USC § 154(b)(1)(C) is 663 days, then the total number of days of PTA in dispute on this ground is 305 days.

Patentee therefore requests an award of an additional 365 or 360 days of PTA for this delay.

C-2. Alternative Treatment of Fifth Time Period In Dispute: 366 additional days

As set forth above, the PTO's PTA award fails to account for the PTO's delay subsequent to the Reply filed on May 31, 2001(a Response to Restriction Requirement). While Patentee believes that the PTO's own regulations, e.g., 37 CFR § §1.703(a)(2), requires an award of PTO delay of 2546 days for this delay, Patentee offers an alternative treatment of this ground that will make the Patentee whole in this case.

The relevant PTA statute, 35 USC § 154(b)(1)(A)(ii), requires the PTO to "respond to a reply . . . within four months after the date on which the reply was filed." Here, a Reply was filed on May 31, 2001, and so the PTO was required to "respond" by September 30, 2001.

The first PTO action after the Reply was the Declaration of Interference on October 1, 2002. If the Declaration of Interference is considered to "stop the clock" under 35 USC § 154(b)(1)(A)(ii), then the Patentee would be entitled to 366 days of PTO delay under 35 USC § 154(b)(1)(A)(ii). As this period of delay does not overlap with any of the other periods of delay acknowledged in the Decision, Patentee would be entitled to an additional 366 days PTA under this interpretation and application of the statute.

## III. Summary and Calculation of PTA

In view of the foregoing, Patentee has recalculated PTA for the captioned patent, and has determined that the patent is entitled to a total of 2729 or 2730 days PTA, as shown on the attached sheet, which shows the relevant delays under 35 USC § 154(a)(1)(A), (B) and (C), and under 37 CFR §§1.702(a), (b) and (c), 37 CFR §§1.703(a), (b) and (c), and 37 CFR § 1.704(c). Patentee therefore respectfully requests that the patent be **accorded 2729 or 2730 days PTA.**

Specifically:

(i) an additional 290 days of PTA should be awarded under 35 USC § 154(a)(1)(B), 37 CFR § 1.702(b), and 37 CFR §1.703(b), under the PTO's own interpretations and applications of the PTA statutes and rules, as being the non-overlapping days of delay out of the 1925 days of delay accrued 35 USC § 154(a)(1)(B) and 37 CFR § 1.702(b), as acknowledged in the Decision.

(ii) an additional 60 days PTA should be awarded under 35 USC § 154(b)(1)(C)(i), 37 CFR §1.702(c), and 37 CFR §1.703(c)(1), because the interference was not "terminated" until 60 days after the Board decision, (i.e., on July 23, 2004), for a total PTA award for the delays associated with the interference of 663 days.

If this additional 60 days PTA is awarded, then the 290 days of PTA under 35 USC § 154(a)(1)(B) discussed above should be reduced by 60 days.

(iii) an additional 1 day of PTA should be awarded under 35 USC § 154(a)(1)(A)(iv), 37 CFR § 1.702(a)(4), and 37 CFR §1.703(a)(6), as being the non-overlapping day of delay out of the 33 days of delay accrued under 35 USC § 154(b)(1)(A)(iv) and 37 CFR §1.702(a)(4), if additional PTA is awarded under 35 USC § 154(a)(1)(B) as discussed above in section I. Otherwise, an additional 33 days of PTA should be awarded under 35 USC § 154(a)(1)(A)(iv), 37 CFR § 1.702(a)(4), and 37 CFR §1.703(a)(6).

(iv) an additional 365 days of PTA should be awarded under 35 USC § 154(a)(1)(A)(ii), 37 CFR § 1.702(a)(2), and 37 CFR §1.703(a)(2), as being the non-overlapping days of delay out of the 2546 days of delay accrued based on the PTO's delay beginning on September 30, 2001, which was four months after the Applicants filed a Reply, and ending on the day the Notice of Allowance was issued on September 19, 2008, based on the PTA awarded in the Decision under 37 CFR §1.703(c)(1).

Or, if an additional 60 days PTA is awarded under 37 CFR §1.703(c)(1), an additional 305 days of PTA should be awarded under 35 USC § 154(a)(1)(A)(ii), 37 CFR § 1.702(a)(2),

and 37 CFR §1.703(a)(2), as being the non-overlapping days of delay out of the 2546 days of delay accrued based on the PTO's delay beginning on September 30, 2001, which was four months after the Applicants filed a Reply, and ending on the day the Notice of Allowance was issued on September 19, 2008.

In the alternative, an additional 366 days of PTA should be awarded under 35 USC § 154(a)(1)(A)(ii) and 37 CFR § 1.702(a)(2), based on the PTO's delay beginning on September 30, 2001, which was four months after the Applicants filed a response to the Restriction Requirement, and ending on the day the Declaration of Interference was issued on October 1, 2002.

As set forth in the Decision, the possible 215 days of Applicant delay that Patentee had raised under 37 CFR § 1.704 "is not applicable."

Adding these amounts of non-overlapping delay to the 2073 days PTA awarded by the PTO in the Decision results in a total PTA award of 2729 or 2730 days:

Thus, Patentee requests that the patent be accorded **2729 or 2730 days PTA**.

The patent is not subject to a terminal disclaimer. A terminal disclaimer was filed in the application; however, a petition to withdraw the Terminal Disclaimer was granted on April 16, 2008.

Patentee believes no additional fee is due. However, the Commissioner is authorized to charge any fees which may be due, or credit any overpayment, to Deposit Account No. 19-0741.

Respectfully submitted,

Date February 17, 2011

By Emily C. Brinckerhoff

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Courtenay C. Brinckerhoff
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# Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number:091856-0111
Application Number:09/200743
Patent Number:7,598,271

| | Event Description | Event Date | Days from Filing | PTO Days | Applicant Days |
|---|---|---|---|---|---|
| Edit Delete | Application Filing Date | 11/27/2000 | 0 | | |
| Edit Delete | Restriction Requirement | 04/26/2001 | 150 | | |
| Edit Delete | Restriction Requirement Response Received at PTO | 05/31/2001 | 185 | | |
| | Restriction Requirement Response Filed + 4 months | 09/30/2001 | 307 | | |
| Edit Delete | IDS NOT falling under 1.704(c)(6), (8) or (10) filed at PTO | 03/20/2002 | 478 | | |
| Edit Delete | Interference Declared | 10/01/2002 | 673 | | |
| Edit Delete | Interference Decided | 05/25/2004 | 1,275 | | |
| Edit Delete | Interference Concluded (60 days after decision) | 07/24/2004 | 1,335 | (663) | |
| | Interference Decided + 4 months | 05/25/2004 | 1,335 | | |
| | 3 Year Period Starts | 09/20/2005 | 1,758 | | |
| Edit Delete | Notice of Allowance | 09/19/2008 | 2,853 | (2546) (1455) | |
| Edit Delete | Issue Fee Paid | 10/01/2008 | 2,865 | | |
| | Issue Fee Paid + 4 months | 02/01/2009 | 2,988 | | |
| | 3 Year Period Stopped | 03/05/2009 | 3,020 | (1925) | |
| Edit Delete | Request for Withdrawal from Issuance | 03/06/2009 | 3,021 | (33) 2714 | |
| Edit Delete | Request For Continued Examination (including amendment) | 03/06/2009 | 3,021 | | |
| Edit Delete | Notice of Allowance | 04/17/2009 | 3,063 | | |
| Edit Delete | Issue Fee Paid | 05/21/2009 | 3,097 | | |
| | Issue Fee Paid + 4 months | 09/21/2009 | 3,220 | | |
| Edit Delete | Patent Grant Date | 10/06/2009 | 3,235 | 15 | |
| | | | | Totals: 2,729 | 0 |
| | | | | PTA: 2,729 | |

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OFFICE OF PETITIONS

FOLEY AND LARDNER LLP
SUITE 500
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In re Application of :
Benneker et al. :
Application No. 09/200,743 :
Patent No. 7,598,271 :
Filed: November 30, 1998 :
Issued: October 6, 2009 :
Atty Docket No. 091856-0111 :
Title: CRYSTALLINE PAROXETINE :
METHANE SULFONATE :

DECISION
ON APPLICATION FOR
PATENT TERM ADJUSTMENT

This is a decision on the "RENEWED REQUEST FOR RECONSIDERATION OF PTA UNDER 37 C.F.R. § 1.705 & RESPONSE TO DECISION ON PETITION," filed on October 22, 2009 and supplemented on June 2, 2010. Patentee requests that the patent term adjustment be increased from two thousand and seventy-two (2072) days to two thousand, five hundred and fourteen (2514) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by two thousand and seventy-three (2073) days is **GRANTED to the extent indicated herein.**

The $200 fee that is associated with the filing of this petition will be charged to Deposit Account No. 19-0741 in due course, as authorized on the seventh page of this petition.

On October 1, 2008, Applicants submitted a "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT," which was granted via the mailing of a decision on February 10, 2009.

On May 21, 2009, Applicants submitted a petition requesting that the patent term adjustment be increased to two thousand and seventy-two (2072) days, which was dismissed as premature via the mailing of a decision on August 26, 2009.

Application No. 09/200,743 matured into U.S. patent No. 7,598,271 on October 6, 2009, with a patent term adjustment of two thousand and seventy-two (2072) days.

Patentee has indicated that this patent is not subject to a terminal disclaimer.[1]

With this petition, there are five periods of examination and applicant delay that are in dispute.

Regarding the first period that is in dispute, the Office agrees that the period of examination delay pursuant to 37 C.F.R. § 1.703(c)(1) totals 603 days,[2] and not 602 days.

Regarding the second period that is in dispute, the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period. Therefore, the over three-year period begins on November 28, 2003 and ends on March 5, 2009, the day before the first RCE was filed, which amounts to 1925 (not 1926)[3] days. See U.S.C. 154(b)(1)(B)(i).

Regarding the third period that is in dispute, the 215-day period of applicant delay discussed on the sixth page of this petition is not applicable.

Regarding the fourth period that is in dispute, the issue fee was paid on October 1, 2008, and a petition to withdraw the application from issuance was filed four months and 33 days later on March 6, 2009. Patentee argues this constitutes 33 days of examination delay pursuant to 37 C.F.R. § 1.703(a)(6),[4] however no adjustment pursuant to this Rule is warranted: due to Applicant's request to withdraw the application from issuance, the Office was not required to issue the patent at that time.

Regarding the fifth period that is that is in dispute, Patentee argues that 2546 days of examination delay is warranted pursuant to 37 C.F.R. § 1.703(a)(2), as a response to a restriction requirement was filed on April 26, 2001 and a notice of allowance was mailed four months and 2,546 days later on

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[1] Petition, page 6 and supplement to petition, page 6.
[2] Id.
[3] See chart accompanying both this petition and supplement to petition.
[4] Petition, page 5 and supplement to petition, page 5.

September 19, 2008. This calculation is erroneous, as the period of delay should have commenced with the four-month anniversary of the mailing of the decision on the interference on May 25, 2004, and not with the four-month anniversary of the filing of the response to the restriction requirement on April 26, 2001. As such, an adjustment of 1455 (not 2546) days is warranted. As was set forth on the third page of the decision of February 10, 2009:

> …a favorable decision by the Board was mailed on May 25, 2004. The Office did not mail an Office action, a notice of allowance, in response until September 19, 2008, four months and 1455 days later. Pursuant to 37 CFR 1.703(a)(5), a period of adjustment of 1455 days should have been entered. Instead a period of adjustment of 2,546 days was entered. The period of adjustment of 2,546 days is being removed and the period of adjustment of 1455 days is being entered.

As such, the patent term adjustment is increased by 2073 days, not 2514 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, Patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **two thousand and seventy-three (2073) days.**

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3225.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

# CERTIFICATE OF CORRECTION

PATENT : 7,598,271 B1

DATED : **October 6, 2009** **DRAFT**

INVENTOR(S) : Benneker et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 2072 days

Delete the phrase "by 2072 days" and insert – by 2073 days--

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JUN 03 2010

**OFFICE OF PETITIONS**

[redacted]

DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION

[redacted]

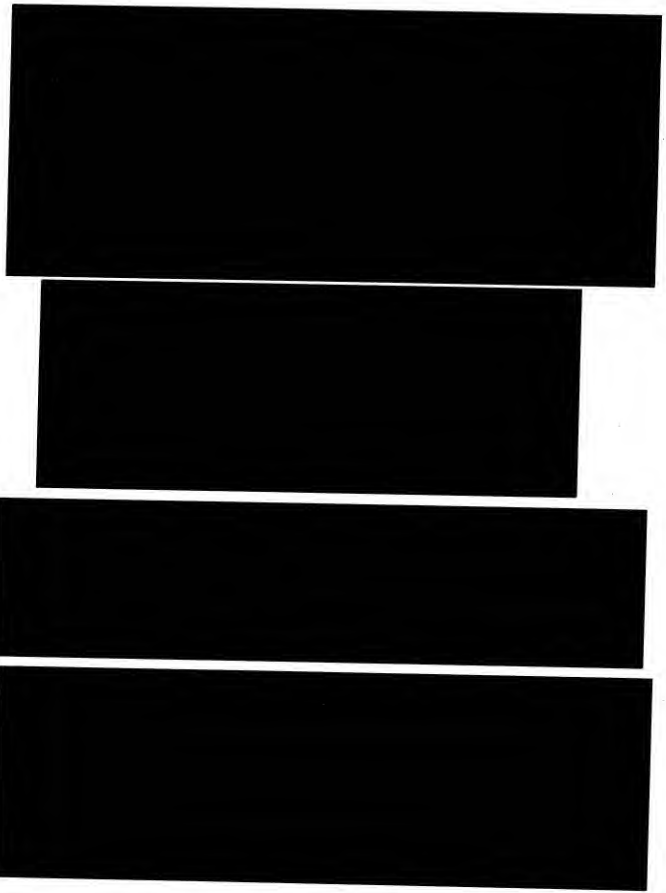
[redacted]

[redacted]

Patentees assert that the 105 day time period accorded pursuant to 37 CFR 1.702(c) for the number of days, if any, in the period beginning on the date an interference was declared or redeclared to involve the application in the interference and ending on the date that the interference was terminated with respect to the application, is incorrect. Specifically, patentees assert that the date of termination of the interference is September 15, 2005, the date which is two (2) months after the mailing of the Board Decision, and the end of the two (2) month period during which an appeal of the decision can be taken or other review can be had.

Patentees are correct. The interference was terminated on September 15, 2005, not July 15, 2005. Accordingly, the period under 37 CFR 1.703(c) is 168 days, not 105 days. The 105 day period will be removed and a 168 day period will be entered.

[redacted]



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Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.

Anthony Knight
Director
Office of Petitions

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